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JEFFREY S. SHARP  
MARSHALL, GERSTEIN AND BORUN  
6300 SEARS TOWER  
233 SOUTH WACKER DRIVE  
CHICAGO IL 60606-6357

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JUN 02 2008

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Conway et al.	:	
Application No. 09/889085	:	
Filing or 371(c) Date: 01/09/2002	:	<b>DECISION</b>
Attorney Docket Number: 28053/38258	:	<b>ON PETITION</b>

This is a decision on the "Petition Under 37 CFR 1.182 and Request for Entry of Previously Filed Amendment and Request to Re-Open Prosecution," filed April 16, 2007. The petition is properly treated as a petition to withdraw the holding of abandonment based upon evidence that a timely reply was filed under 37 CFR § 1.181 (no fee). The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed May 31, 2005, wherein no claims were allowed. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a Notice of Appeal in response to the Office action on October 3, 2005, and an Appeal Brief on March 3, 2006. The Examiner filed an Answer on May 2, 2006, and Applicant filed a Reply Brief on July 5, 2006. The case was set before the Board of patent Appeals and interferences ("Board"), which affirmed the Examiner in a Decision mailed December 29, 2006. A Notice of Abandonment was mailed March 14, 2007.

**Applicant's Assertion**

Applicant files the present petition and asserts that a timely Amendment of the rejected claims was filed in response to the Board Decision, under the provisions of 37 CFR 1.8 on February 28, 2007. In support of this assertion, Applicant files a copy of the reply.

Office records


A review of Office records reveals that the Office received an "Amendment and Request to Reopen Prosecution Under 37 CFR Section 41.50," (hereinafter 'Amendment'), on March 5, 2007. A review of the Transmittal Form filed with the Amendment reveals that the Transmittal Form contains a Certificate of Mailing under 37 CFR 1.8(a), dated February 28, 2007, executed by Petitioner herein.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

The petition fee has been refunded to Applicant's deposit account as authorized in the present petition.

The application will be referred to Technology Center Art Unit 1657 for processing of the Amendment, and for continued examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



Derek L. Woods

Attorney  
Office of Petitions